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which were then in the defendant's possession. *Held*, that this is error, though not prejudicial. *Hanish v. United States* (not yet reported).

For a full discussion of the principle involved, see NOTES, p. 221.

EVIDENCE — OPINION EVIDENCE — DOES THE OPINION RULE APPLY TO DYING DECLARATIONS. — In a trial for voluntary manslaughter, a dying declaration of the deceased, to the effect that the defendant had killed him "on purpose," was admitted over the defendant's objection that it was opinion evidence. *Held*, that the admission was proper. *Pippin v. Commonwealth*, 56 S. E. 152 (Va.).

It is a general rule that only such testimony as would have been admissible from the deceased if he were a witness is admissible as his dying declaration. *Whitley v. State*, 38 Ga. 50, 70. This would generally exclude opinions. See 1 GREENLEAF, EVIDENCE, 16 ed., § 159. Accordingly, the opinion of the deceased as to the defendant's fault in killing him is excluded in many states. *Berry v. State*, 63 Ark. 382, 38 S. W. 1038; *Kearney v. State*, 101 Ga. 803, 29 S. E. 127; *State v. Sale*, 119 Ia. 1, 92 N. W. 680. *Contra*, *Gerald v. State*, 128 Ala. 6, 29 So. 614; *Boyle v. State*, 105 Ind. 460, 5 N. E. 203. There seems to be a general feeling in all the cases that opinion as such should be excluded; many courts which admit accusations of the deceased as dying declarations construing the accusation as a method of indicating a complex set of facts. *Commonwealth v. Mathews*, 80 Ky. 287, 12 S. W. 333. It has been argued that the reason for the opinion rule, which is to leave the drawing of inferences to the jury when the facts from which the witness drew his opinion can be detailed to them, does not apply to dying declarations, where it is impossible to put the jury in possession of the facts. See 2 WIGMORE, EVIDENCE, § 1447. But as the opinion rule is also based largely on the fear that opinions of witnesses will unduly prejudice the jury, an objection to which accusations like those in the principal case are especially open, it seems wise to exclude such declarations whenever, in the opinion of the trial judge, the danger of prejudice outweighs their probative value. Abuse of the trial judge's discretion should then be the only ground for reversal.

EVIDENCE — *RES GESTAE* — WHETHER STATEMENTS CHARACTERIZING ADVERSE POSSESSION ARE HEARSAY. — On the issue of whether X.'s possession of certain land was adverse, testimony that X. had said, while in possession, "that she made an exchange . . . in which she got the land now in dispute," was held inadmissible. *Oahu Ry. Co. v. Kaili*, 22 Hawaii Adv. 673.

The court subscribed to the accepted doctrine that the declarations of a person in possession of land as to the nature of his claim are part of the *res gestae*. *McConnell v. Hannah*, 96 Ind. 102. Nevertheless it excluded the testimony on the ground that it was merely narrative of a past transaction. *Wilkinson v. Bottoms*, 56 So. 948 (Ala.); *Whitaker v. Whitaker*, 157 Mo. 342, 354, 58 S. W. 5, 8. But the use of the term "narrative" as a limitation to the *res gestae* doctrine means "non-contemporaneous with the act characterized." Cf. *Rockwell v. Taylor*, 41 Conn. 55, 59-60; *Carter v. Buchannon*, 3 Ga. 513, 517-18; *Commonwealth v. Hackett*, 2 Allen (Mass.) 136, 139; *Sorenson v. Dundas*, 42 Wis. 642, 643. See 1 GREENLEAF, EVIDENCE, § 110; 3 WIGMORE, EVIDENCE, § 1756 (c). In the principal case, as the words in question characterize a contemporaneous possession, their exclusion indicates a confusion of the popular with the technical import of the word "narrative." But a correct analysis shows the problem not to be one of *res gestae* at all. The fact to be proven is the mental attitude of the occupant of the land. As circumstantial evidence of this, evidence whose value lies rather in the inference from the fact of statement than in the truth of what is asserted, the declarations are properly